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| <p style="text-align: center;">TOWN OF VIENNA, VIRGINIA ADMINISTRATIVE REGULATIONS</p> | | |
| <p><u>Subject:</u></p> <p style="text-align: center;">GRIEVANCE PROCEDURES</p> | <p><u>Regulation No:</u></p> <p style="text-align: center;">2.18</p> | <p><u>Effective Date:</u></p> <p style="text-align: center;">December 26, 2002</p> |
| | <p>Supersedes: March 1, 2002</p> | |

I. GRIEVANCE PROCEDURE - NON-SWORN PERSONNEL

A. STATEMENT OF POLICY

The Town of Vienna is committed to resolving employee complaints and grievances in a just and equitable manner.

All employees of the Town of Vienna have the right to submit grievances for resolution without threat of discrimination, coercion, recrimination, restraint, or reprisal. The timely resolution of grievances enhances employer/employee relations and serves the mutual interests of all concerned parties.

B. COVERAGE

The provisions of this procedure apply to all non-probationary, permanent, full-time and part-time Town employees, except the Town Manager, Town Clerk and the Town Attorney and the sworn police officers whose grievances are subject to the provisions of Section II of this administrative regulation (the Code of Virginia, Title 9.1, Chapter 5, § 9.1-500 through 9.1-507) and who have elected to proceed pursuant to Section II in resolution of their grievance.

All sworn police officers must submit in writing to the Chief of Police with a copy to the Director of Administrative Services the grievance procedure under which they desire to have their appeal held.

C. DETERMINATION OF GRIEVABILITY

The grievance procedure is not intended to limit or modify the existing rights of Town management with respect to:

1. Directing the work of employees and determining compensation and general employee benefits.
2. Hiring, promotions, and transfers.
3. Maintaining efficiency of operations.
4. Relieving employees from their duties in emergency situations.
5. Determining the methods, means, and personnel by which Town operations are to be carried out.

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D. DEFINITION OF GRIEVANCE

A grievance is defined as a complaint or dispute of an employee relating to his employment. Such complaints may include, but are not limited to:

1. Disciplinary actions, including dismissals, demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance.
2. The proper application of personnel policies, procedures, rules, regulations, ordinances and statutes.
3. Complaints of discrimination on the basis of race, religion, color, creed, sex, handicap, political affiliation, age or national origin.

. Acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth of Virginia, has reported any violations of such law to a governmental authority or has reported an incidence of fraud, abuse or gross mismanagement.

5. Retaliation of exercising any right otherwise protected by law.

Management reserves the exclusive right to manage the affairs and operations of the Town government. Accordingly, the following complaints are not grievable under this procedure:

1. Establishment and revision of wages or salaries, position classifications or general benefits.
2. Work activity accepted by the employee as a condition of employment, or work activity which may reasonably be expected to be a part of the job content.
3. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations.
4. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly.
5. The methods, means and personnel by which such work activities are to be carried on.

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6. Except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, discharge, lay-off or suspension from duties because of lack of work, reduction in work force or job abolition.

7. The hiring, transfer, assignment and retention of employees within the Town (provided such actions do not constitute disciplinary actions).

8. The relief of employees from duties of the Town in emergencies.

In any grievance brought under the exception to Administrative Regulation 2.18(D)6, the action shall be upheld upon a showing by the Town that: (1) there was a valid business reason for the action, and (2) the employee was notified of such reason in writing prior to the effective date of the action.

The classification of a complaint as "non-grievable" shall not be construed to restrict any employee's rights to seek or management's right to provide customary administration review of complaints outside the scope of the grievance procedure.

E. GRIEVANCE FILING PROCEDURE

The following "ladder of progression" shall be followed when filing a grievance. Where an employee begins the procedure depends on who the employee's immediate supervisor is (e.g., laborer would start with foreman, superintendent with department head, etc.).

Foreman, Superintendent or Supervisor
Department Head
Town Manager

All grievable employment disputes will be administered in the following specified manner and within the specified time limits.

First Step:

1. The employee shall identify the grievance verbally to the immediate supervisor in an informal meeting within twenty (20) calendar days after the event or action which is the basis for the grievance.

2. The supervisor shall give a verbal response to the employee within five (5) workdays

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following the meeting.

3. If a resolution is not reached at this point, the employee shall submit to the supervisor on Form A the nature of the grievance and the specific relief requested within five (5) workdays following the date of receipt of the verbal response.

4. The supervisor, in turn, shall give the employee a written response on Form A within five (5) workdays of receipt of Form A.

Second Step:

1. If the first-step written response is not accepted, the employee should indicate on Form A the desire to have the grievance advanced to the next step. The grievance must be submitted to the department head within five (5) workdays following receipt of the supervisor's reply.

2. Upon receipt of Form A, the department head shall meet with the employee within five (5) workdays. The only persons present at this meeting are the employee, the department head and appropriate witnesses.

3. The department head shall give the employee a second-step response in writing on Form A within five (5) workdays of the meeting.

Third Step:

1. If the second-step written response is not accepted, the employee should check on Form A the desire to advance the grievance to the third step. The employee is allowed five (5) workdays to forward the grievance to the Town Manager.

2. Upon receipt of Form A, the Town Manager shall meet with the employee within five (5) workdays. The persons present at this meeting are the employee, the Manager, appropriate witnesses, and, at the employee's option, a representative of his/her choice. Should the employee have an attorney present, the Town may also have its attorney present.

3. The Town Manager shall give the employee a third-step response in writing on Form A within five (5) workdays following the meeting.

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4. With the exception of the final management step, the only persons who may normally be present in the management-step meetings are the grievant, the appropriate local government official at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony. At the final management step, the grievant, at his/her option, may have present a representative of his/her choice. If the grievant is represented by legal counsel, local government likewise has the option of being represented by counsel.

F. PROCEDURES FOR DETERMINING GRIEVABILITY:

When either the employee or the supervisor so requests, the Town Manager shall decide, within ten (10) calendar days of the request, whether or not a matter is grievable. The decision of grievability shall be made subsequent to the reduction of the grievance to writing but prior to the panel hearing, and a copy of the decision shall be sent to the grievant. The issue of grievability shall be decided prior to the panel hearing, or it shall be deemed to be waived. Decisions of the Town Manager concerning the issue of grievability may be appealed to the Circuit Court having jurisdiction in the locality in which the grievant is employed for a hearing on the issue of whether the grievance qualifies for a panel hearing.

Proceedings for review of the decision of the Town Manager on the issue of grievability shall be instituted by filing a notice of appeal with the Town Manager within ten (10) calendar days from the date of the receipt of the decision and giving a copy thereof to all parties. Within ten (10) calendar workdays thereafter, the Town Manager shall transmit to the Clerk of the Court a copy of his decision, a copy of the notice of appeal, and the exhibits, with copies to the grievant. Within 30 days of receipt of such records by the Clerk, the Court, sitting without a jury, shall hear the appeal on the record transmitted by the Town Manager and any additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The decision of the Court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The Court may affirm the decision of the Town Manager or may reverse or modify the decision. The decision of the Court is final and not appealable.

G. PANEL HEARING:

If the employee wishes to advance the grievance to a panel hearing, the employee must so note on Form A and forward Form A to the Town Manager within ten (10) workdays of receipt of the third-step reply. The final step of the grievance procedure shall be the actual panel hearing. If an issue is determined to qualify for a panel hearing by the Town Manager or Circuit Court, the following procedures shall apply:

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1. Panel Members:

A panel shall consist of three (3) members: one member appointed by the grievant; one member appointed by the Town; and a third member selected by the other two members.

The third panel member shall be the chairperson of the panel. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of the grievant and the following relatives of a participant in the grievance process are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew or first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee, or co-employee of such attorney shall serve as a panel member.

2. Panel Selection:

The employee and the department shall select their respective panel members within five (5) workdays following the receipt of the decision that the grievance qualified for a panel hearing. The full panel selection shall be completed within ten (10) workdays. However, this time limit may be extended in instances where the agreement on a third panel member has not been reached. In such instances, the Town shall within five (5) workdays request the Chief Judge of the Circuit Court to select a third panel member.

3. Panel Hearing Date:

The full panel will set the date, the time and place for the hearing, which shall be held within ten (10) workdays following the selection of the full panel. The panel chairperson shall immediately notify the grievant and management of the hearing date.

4. Case Presentation:

The grievant and management may be represented by legal counsel, or other representatives of their choice, at the panel hearing. Such representatives may examine, cross-examine, question or present evidence in behalf of the grievant or management before the panel. (Detailed Rules for the Conduct of Panel Hearings are attached as Appendix I.)

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5. Panel Decision:

The panel, in rendering its decision, shall be guided but not necessarily bound by the relief specified by the grievant on Form A. The panel shall render its decision on Form B along with any other related written documentation and distribute copies to the employee, Town Manager and Director of Administrative Services within ten (10) workdays of the conclusion of the hearing. The reasons for the panel's decision shall be set forth on Form B. The majority decision of the panel shall be final and binding and shall be consistent with provisions of law and written policy. The Town Manager is responsible for assuring that the panel decisions are implemented. Either party may petition the Circuit Court for an order requiring implementation of the decision. If a written request to reconsider the panel decision is submitted by either party within five (5) workdays of receipt of the decision, the panel by majority vote may elect to review its decision and/or reopen the hearing for good cause shown.

Any challenge of a panel decision on the grounds of inconsistency with law and written policy shall be submitted by either party within five (5) workdays to the Director of Administrative Services, who is empowered to decide such questions and to direct reconsideration by the panel where appropriate.

Notwithstanding the above, after receipt of the panel decision, the Town Manager may on his/her action remand to the panel for further consideration a decision which appears to be inconsistent with law or written policy.

The following outlines the general provisions of the grievance procedure:

1. Management-Step Procedures:

Face-to-face meetings are required between the employee and the supervisor in each of the meetings specified in the procedure. The grievant is entitled to be heard at three successively higher levels of management. The Town Manager is the final step of the appeal process.

2. Workdays:

Workdays refer to the normal work schedule of the person required to take some action.

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3. Witnesses:

In the second and third management steps, witnesses may be called to offer evidence pertinent to the grievance and shall be excused upon completion of their statements. Witnesses should normally be present in the panel hearing only while giving their testimony. There is no subpoena power to compel the attendance of witnesses in the grievance procedure. The panel may, however, on the request of either party or at its own discretion, request the voluntary appearance of witnesses.

4. Procedural Compliance:

It is important that both the employee filing the grievance and the Town observe all the procedural requirements set forth herein. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause will result in a decision in favor of the other party on any grievance, provided the party not in compliance fails to correct the noncompliance within five (5) workdays of receipt of written notification by the other party of the grievance violation. Such written notification by the grievant shall be made to the Town Manager. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party.

5. Extension of Time Periods:

The time periods outlined herein constitute substantial procedural requirements. The Town Manager, at his/her option, may require a clear, written explanation of the basis for just cause time extensions. Only the Town Manager may authorize any extensions to the time deadlines.

6. Costs:

The grievant shall not be responsible for court costs of appeals to the Circuit Court for determination on whether an issue qualifies for a panel hearing. The grievant is responsible for the cost of legal counsel or other representation in the preparation of the employee's case in all or any part of the proceedings.

7. Recorders:

The use of court reporters, as well as mechanical recorders, shall not be permitted in the management steps. They may be used at the panel hearing, however, at the discretion of

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either party. A hearing disabled employee shall be allowed to have an interpreter during any and all procedural steps.

II. POLICE OFFICER'S GRIEVANCE PROCEDURE:

Sworn police officers of the Town of Vienna are provided certain procedural rights in matters which could lead to dismissal, demotion, suspension, or transfer for punitive reasons. All police officers shall receive a written copy of these rights. These rights are mandated by the Law Enforcement Officer's Procedural Guarantees Act, Code of Virginia, Title 9.1, Chapter 5, § 9.1-500 through 9.1-507.

The rights guaranteed to police officers under this act are as follows:

A. CONDUCT OF INVESTIGATION

Whenever an investigation by the Town focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law enforcement officer, the following conditions shall be complied with:

1. Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the Vienna Police Department, unless circumstances dictate otherwise.
2. Prior to the officer's being questioned, he/she shall be informed of (I) the name and rank of the investigating officer, and of any individual to be present during the questioning, and (II) the nature of the investigation.

B. PERSONAL ASSETS OF OFFICERS

No law enforcement officer shall be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his family or household, unless such information is necessary in investigating a possible conflict of interest with respect to the performance of his/her official duties, or unless such disclosure is required by law, or unless such information is related to an investigation.

Nothing in this section shall preclude the Town from requiring a law enforcement officer to disclose any place of off-duty employment and where he/she may be contacted.

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C. NOTICE OF CHARGES

Before any dismissal, demotion, suspension without pay, or transfer for punitive reasons may be imposed, the following must be complied with:

1. The law enforcement officer shall be notified in writing of all charges, the basis therefor, and the action which may be taken.
2. The law enforcement officer shall be given five (5) working days to respond orally and in writing to the charges.
3. In making his/her response, the law enforcement officer may be assisted by counsel at his/her own expense.

D. HEARING

1. Whenever a law enforcement officer is dismissed, demoted, suspended, or transferred for punitive reasons he/she may, within five (5) working days following such action, request a hearing. If such request is made in a timely manner, a hearing shall be held within fourteen (14) workdays from receipt of the request, unless a later date is agreed to by the law enforcement officer and the Chief of Police.

At the hearing, the law enforcement officer and the Town shall be afforded the opportunity to present evidence, and examine and cross-examine witnesses. The law enforcement officer and the Town shall also be given the opportunity to be represented by counsel at the hearing. The panel conducting the hearing shall rule on the admissibility of the evidence and shall issue subpoenas requiring the testimony of witnesses who have failed or refused to appear at the hearing. A record shall be made of the hearing.

2. The hearing shall be conducted by a three-member panel, all of which shall be officers within the Vienna Police Department, except the following are specifically prohibited from serving on a hearing panel:

- a. Officers who are related to the accused employee by blood or marriage.
- b. Officers who are under investigation by the department for possible improper conduct involving the same or a related incident.
- c. Officers who during the last six (6) months have been suspended.

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The panel will consist of one member selected by the grievant, one member of equal rank or no greater than two ranks above the grievant selected by the Chief of Police, and the third member selected by the other two members. In the event that the two such members cannot agree upon their selection, the Chief Judge of the Circuit Court shall choose the third member.

3. At the direction of the Town, it may, in lieu of complying with the provisions of paragraph C, give the law enforcement officer a statement, in writing, of the charges, the basis therefor, and the action which may be taken, and provide a hearing as provided for in paragraph D prior to dismissing, demoting, suspending or transferring for punitive reasons the law enforcement officer.

4. The recommendations of the panel, and the reasons therefor, shall be in writing and shall be transmitted by the completion of the next working day to the law enforcement officer, or his/her attorney, and the Chief of Police. Such recommendations shall be advisory only but shall be accorded significant weight.

5. Recommendations made by the hearing panel shall fall into one of the following four categories: dismissal of charges; recommendation for future investigation; finding charge or charges not sustained; or finding charge or charges sustained.

6. Upon finding the charge or charges sustained, the hearing panel shall recommend one of the following actions: oral reprimand not to be included in grievant's personnel file; written reprimand to be included in grievant's personnel file; suspension from duty without pay for a specified period of time; transfer from current duty assignment to another duty assignment; reduction in rank and pay; or dismissal from the department.

E. IMMEDIATE SUSPENSION

Nothing in this section shall prevent the immediate suspension without pay of any law enforcement officer whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the Town or the public, nor shall anything in this section prevent the suspension of a law enforcement officer for refusing to obey a direct order issued in conformance with the Town's written and disseminated rules and regulations. In such case, the law enforcement officer shall, upon request, be afforded the rights provided for under this section within five (5) working days from the date of the suspension.

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F. APPEALS

1. Appeals to the Chief of Police of disciplinary action taken at a level of command below the office of the Chief of Police.

a. Appeals of disciplinary actions imposed shall be submitted in writing to the office of the Chief of Police within forty-eight (48) hours of the disciplinary decision. The Chief of Police shall cause an inquiry to be made of circumstances surrounding the case. In such cases when information is developed which may lead to dismissal, demotion, suspension or transfer for punitive reasons, the procedure stated in Administrative Regulation § 2.18(II) shall be initiated.

b. If imposition of this disciplinary action does not include dismissal, demotion, suspension or transfer for punitive reasons, the Chief of Police or his designated representative shall hear the appeal and determine final disposition within ten (10) working days of appeal.

2. Appeals to the Town Manager from certain disciplinary decisions made by the Chief of Police.

Appeals of disciplinary decisions of dismissal, demotion, suspension or transfer for punitive reasons made by the Chief of Police or his designated representative shall be made in writing to the Town Manager within ten (10) working days of notification of such disciplinary decisions. A copy of the appeal shall also be forwarded to the Chief of Police.

3. Disposition of appeals to the Town Manager.

a. The Town Manager shall hear and decide any appeal of decisions by the Chief of Police or his designated representative which may lead to dismissal, demotion, suspension or transfer for punitive reasons. (Decisions involving oral or written reprimands are not appealable to the Town Manager.)

b. If the decision of the Chief of Police is made following the recommendations of a hearing panel, then the Town Manager may, at his/her sole discretion, but is not required to, direct the appointment of a special hearing panel.

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c. If the decision of the Chief of Police is made without referral to a hearing panel for its recommendation, the Town Manager shall direct the appointment of a special police hearing panel, unless the accused employee waives his/her right to such a panel in writing.

d. The special police hearing panel shall consist of three members selected in accordance with Section II, paragraph D, subsection 2. The findings and/or recommendations of the special police hearing panel are to be given to the appellant or his/her attorney and the Town Manager by completion of the next working day and are advisory to and not binding upon the Town Manager.

G. ORAL REPRIMAND NOT PROHIBITED

Nothing in this section shall be construed to prohibit the informal counseling of a law enforcement officer by a supervisor in reference to a minor infraction of policy or procedure which does not result in a disciplinary action being taken against the law enforcement officer.

H. GENERAL ORDERS

If anywhere the police officer's grievance procedures described herein conflict with or omit information in the General Orders of the Vienna Police Department; the General Orders shall supersede this document.

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APPENDIX I

RULES FOR THE CONDUCT OF PANEL HEARINGS

These procedures are to assist a grievance panel in preparing for conducting panel hearings.

Prior to the convening of a panel hearing, each panel member should carefully review the grievance and become acquainted with the issues to be addressed. Panel hearings are not meant to be conducted as full court proceedings and panels shall not be bound by the technical rules of evidence. Panels, however, shall take into account all reliable, probative and substantial evidence produced at the hearing.

A panel's responsibility is to ensure the proper application of the Town's policies and procedures. Panels do not have the authority to formulate or to change policies or procedures, nor do they have the authority to consider matters which the grievance procedure makes nongrievable.

A panel by a majority vote may uphold or reverse the action of the Town or, in appropriate circumstances, may choose a modified remedy. Panel decisions, however, must be consistent with provisions of law and written policies. While in appropriate cases a panel might determine that a grievant is entitled to reinstatement from which back pay and a restoration of benefits might flow, in no case does a panel have authority to award damages or attorney fees.

The conduct of panel hearings shall be as follows:

1. The panel will decide whether persons not having a direct interest in the hearing may attend it. At the request of either party, the hearing shall be made private.
2. The Town will provide the panel with copies of the grievance record prior to the hearing and provide the grievant with a list of documents furnished to the panel, grievant and his/her attorney. At least ten (10) days prior to the scheduled panel hearing, the grievant and his/her attorney shall be allowed access to and copies of all relevant files intended to be used in the grievance hearing.
3. At the option of each party, opening statements may be made at the beginning of the hearing and the panel may ask for such statements in order to clarify the issues involved in the grievance.
4. The Town and thereafter the grievant, or their representatives, shall then present their claims, proofs and witnesses who shall submit to questions or other examination. The panel

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may, at its discretion, vary this procedure but shall afford full and equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross-examination.

5. The panel shall have the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence.

6. All evidence must be presented in the presence of the panel and the parties, except by mutual consent of the parties.

7. All documents, exhibits, and lists of witnesses shall be exchanged between the parties in advance of the hearing.

8. The hearing is not intended to be conducted like proceedings in courts and rules of evidence do not apply.

9. The panel by majority vote may decide procedural questions and rule upon objections raised during the course of the hearing.

10. Witnesses other than the parties should remain in the hearing room only while giving their testimony.

11. Members of the panel may question anyone giving testimony in order to clarify points being made.

12. Exhibits offered by the grievant or the Town may be received in evidence by the panel and, when so received, shall be marked and made a part of the record.

13. The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall be judge of the relevancy and materiality of the evidence offered. Evidence is to be taken in the presence of the panel and both parties.

14. After each side has had the opportunity to present its evidence, the panel chairperson shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, both parties shall be given the opportunity to make closing statements summarizing their positions, following which the hearing should be declared closed.

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15. The panel shall render its decision within ten (10) workdays of the conclusion of the hearing. The facts found and the reasons for the panel's decision must be set forth on Form B. Panels are to decide cases on the merits, not on compliance matters occurring prior to or during panel hearings.

16. The hearings shall be reopened at any time before the actual implementation of the panel's decision:

- Upon a majority vote of the panel on its own motion.
- Upon a majority vote of the panel on the application of a party for good cause shown.
- Upon direction from the Director of Human Resources that a panel's decision appears to be inconsistent with law or written policy.

The Town Manager shall decide whether the decision is consistent with written policy. In those cases where the Town Manager is personally involved in the case, the Commonwealth Attorney shall answer any questions concerning consistency.

The panel shall render its decision within ten (10) workdays of the conclusion of the hearing. The facts found and the reasons for the panel's decision must be set forth on Form B.

III. APPLICABLE DOCUMENTS

Grievance Form A: 2.18-1

Grievance Form B: 2.18-2

Signature of Town Manager:



Date: